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FACTSHEET

ISSN 1198-7122 ©Queen's Printer for Ontario

Agdex#: 700 Publication Date: 02/00

Order#: 00-033 Last Reviewed:

Title: The Farming and Food Production Protection Act (FFPPA) and Nuisance Complaints

Division: Agriculture and Rural

History: Replaces *"Odour, Noise and Dust Complaints and the Farm Practices Protection Act"*, Order No. 93-097

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Introduction

Rural Ontario is changing. Farms are increasing in size and complexity, and fewer people living in rural areas are farmers. In 1996, farmers made up 2.1% of Ontario's total population, and only 12.0% of the rural population. That is, only about 1 in 8 people living in rural Ontario actually farms, and it is dropping.

Urban residents are moving to towns and villages, rural routes and concession roads, drawn by the quality of life in rural Ontario. They value the tranquility, the sense of community and the lifestyle.

Farmers appreciate their lifestyles as well, but they also see rural Ontario as a place of business, where the agri-food industry provides their livelihoods and contributes $25 billion a year to the provincial economy.

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As in many areas where industry and residences are located side by side, conflicts about the way business is carried out sometimes arise between farmers and their neighbours. Not surprisingly, nuisance complaints sometimes come from farmers themselves.

To ensure the rights of all rural Ontario residents are respected, the Ontario government passed Bill 146, the *Farming and Food Production Protection Act (FFPPA)*, in May 1998.

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Consultation Process

Before drafting the legislation, the Ontario Ministry of Agriculture, Food and Rural Affairs consulted widely with rural residents. Eight regional meetings drew close to 1,000 farmers, rural landowners and municipal leaders.
Representatives of Ontario's agricultural community said that to conduct their business, they needed to be protected from complaints and nuisance lawsuits regarding normal farming practices. They said that the existing *Farm Practices Protection Act, 1988* was out-of-date and inadequate.

Rural, non-farm residents felt that farming operations needed to be more clearly defined. They said that farming practices should be better explained to create a better understanding of the types of disturbances that stem from them, such as odours or noise. They wanted the *Farm Practices Board*, which held hearings on nuisance complaints, to be more representative of rural Ontario.

Rural municipal leaders, who often deal with conflicting interests, said that clearer definitions and greater understanding would better meet the needs of all rural residents.

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Main Themes of the *FFPPA, 1998*

There are two main themes in the *FFPPA*.

- Farmers are protected from nuisance complaints by neighbours, provided they are following normal farm practices.
- No municipal by-laws apply to restrict a normal farm practice carried on as part of an agricultural operation

Only the first theme dealing with nuisance complaints is discussed in this Factsheet.

Why Agriculture Needs the *FFPPA*

The *FFPPA* outlines in its opening remarks why this legislation is important.

> *"It is desirable to conserve, protect and encourage the development and improvement of agricultural lands for the production of food, fibre and other agricultural or horticultural products. Agricultural activities may include intensive operations that may cause discomfort and inconveniences to those on adjacent lands. Because of the pressures exerted on the agricultural community, it is increasingly difficult for agricultural owners and operators to effectively produce food, fibre and other agricultural or horticultural products. It is in the Provincial interest that in agricultural areas, agricultural uses and normal farm practices*

be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns."

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Definition of an Agricultural Operation

The *FFPPA* broadened the definition of an agricultural operation to an:

"agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward".

Examples listed in the Act include:

- draining, irrigating or cultivating land
- growing, producing or raising
  - livestock, poultry and ratites
  - fur-bearing animals
  - bees
  - cultured fish
  - deer and elk
  - game animals and birds, or
  - any additional animals, birds or fish prescribed by the Minister
- the production of agricultural crops, greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any additional agricultural crops prescribed by the Minister
- the production of eggs, cream and milk
- the operation of agricultural machinery and equipment
- the application of fertilizers, soil conditioners and pesticides
- ground and aerial spraying
- the storage, handling or use of organic wastes for farm purposes
- the processing by a farmer of the products produced primarily from the farmer's agricultural operation
- activities that are a necessary but ancillary part of an agricultural operation such as the movement of transport vehicles for the purposes of the agricultural operation, and
- any other agricultural activity prescribed by the Minister conducted on, in or over agricultural land.

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What is Normal Farm Practice?

The *Act* defined normal farm practices as those:

"conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances, or makes use of innovative technology in a manner consistent with proper advanced farm management practices".

Some believe *normal farm practice* means 'customarily' or 'commonly done'. However, just because something is commonly done, does not make it normal.

The real question is, 'Would a farmer with average, to above average, management skills use this same practice on their farm under the same circumstances?'

What is normal, or not, varies depending on location, type of farm, method of operation, and timing of the farm practice. Normal is site specific for a given set of circumstances, and it may change over time.

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Normal Farm Practices Protection Board *(NFPPB)*

The *FFPPA* established the Normal Farm Practices Protection Board *(NFPPB)* to hear from parties involved in formal complaints that cannot be resolved through local mediation efforts. In other words, holding a hearing with the *NFPPB* should be considered as a last resort alternative. The *NFPPB* role in nuisance complaints is to:

> *"conduct hearings to determine if a disturbance causing a complaint results from a normal farm practice".*

The very existence of the Board aids in resolving nuisance issues. For those issues that cannot be resolved through local mediation, the Board provides a less expensive and quicker forum for complaint resolution than through the courts.

In coming to a decision, the *NFPPB* hears from the parties involved and considers the relevant sections in the *Act*. The *NFPPB*:

> *"may appoint one or more persons having technical or special knowledge of any matter before the Board to assist it in any capacity in respect of that matter".*

'Experts' must be summonsed by the *NFPPB* to ensure that they appear at a hearing. Each affected party can also call witnesses to speak on their behalf. Although the affected parties and experts might offer their opinions about whether a particular farm practice is *normal*, or not, only the *NFPPB* can render a legal decision for a *normal farm practice* for that location, farm type, method of operation, and timing of farm practice.

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Hypothetically, in a hearing before the *NFPPB* by an applicant about noise-producing equipment frequently used to scare birds away from eating grapes in vineyards, the *NFPPB* might decide that it was *normal* to use this equipment:

- in a *location* where few, if any, neighbours lived nearby, but not normal if there were many residences nearby
- in a *vineyard* in the Region of Niagara, but not normal if used to scare coyotes from sheep pastures in Bruce County
- with a *method of operation* using automatic shutoff switches, but *not normal* using manual shutoff switches
- when bird pressure was greatest during the *timing* of early morning and late afternoon, but *not normal* during the middle of the day during hot weather when birds eat less frequently.

Decisions by the *NFPPB* must be consistent with any directives, guidelines or policy statements in relation to agricultural operations, or normal farm practices

issued by the Minister of Agriculture, Food and Rural Affairs.

The *NFPPB* consists of not less than five members appointed by the Minister of Agriculture, Food and Rural Affairs, with one member being the Chair. *NFPPB* members can only serve for three years, but can be re-appointed for a maximum of three more. At least the Chair or Vice-Chair, plus two other members constitute a quorum for hearings. Members include respected farm peers from across the province in many types of farming. They are brought in from areas where they do not know the *applicant* (neighbour who is complaining about a nuisance) or the *respondent* (farmer alleged to be creating the nuisance).

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Seven Nuisances Outlined in the *FFPPA*

The new legislation added *light, vibration, smoke* and *flies* to the previous list of *noise, odour* and *dust* as disturbances for which farmers are not liable, provided these disturbances result from normal farm practices.

The bulk of farm nuisance complaints are about *odours* emanating from manure handling and storage. However, examples of other nuisance complaints might include:

- *light* from greenhouses at night, or farm equipment used at night
- *vibration* from trucks, or fans
- *smoke* from burning tree prunings, or other organic wastes
- *flies* from manure, or spilled feed
- *noise* from crop drying fans, or irrigation pumps, and
- *dust* from field tillage equipment, or truck traffic.

Nuisance issues do not include activities that could be harmful or dangerous to people or the environment. These activities are covered under other legislation.

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What the *FFPPA* Does *NOT* Do

The *FFPPA* is intended to ensure that farmers can carry out normal farm practices knowing that there is legislation to protect them against nuisance complaints. It does not mean that they will not get complaints. It also does not give farmers the right to pollute, or to violate the:

- *Environmental Protection Act*
- *Health Protection & Promotion Act*
- *Pesticides Act*
- *Ontario Water Resources Act.*

The *FFPPA* has sometimes been incorrectly referred to as the 'Right to Farm Act'. This gives the connotation that farmers can do whatever they wish on their own property, regardless of the consequences. This is not the case. Only when farmers carry out *normal farm practice* during the production of a nuisance that causes a complaint, are they protected from liability about that nuisance.

At the same time, this legislation does not prevent anyone from pursuing an injunction against a farmer charged under another *Act.*

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Try Solving Nuisance Complaints Locally First

Applications for a *NFPPB* hearing on nuisance complaints can only be made after all mediated or voluntary solutions have been attempted, but have not succeeded. In some areas of the province, this means that a local Municipal Agricultural Advisory Committee has tried to resolve the issue without success. However, in most areas, this means that the local Agricultural Engineer from the Ontario Ministry of Agriculture, Food and Rural Affairs and the local Environmental Officer from the Ontario Ministry of the Environment have already given their advice and assistance. It is estimated that only about 1% of the total complaints received by Ministry staff on nuisances covered by the *FFPPA* actually end in a *NFPPB* hearing. This is a good thing, since a hearing with the *NFPPB* should be the last course of action, since solving a problem cooperatively and locally first usually yields a longer lasting solution.

How to Apply for a Hearing of the *NFPPB*

Assuming all local mediated or voluntary solutions to abate a nuisance complaint have been attempted, a formal application to the *NFPPB* is the next step. Applications must state:

- the name, street and mailing address of the *applicant* (neighbour who is complaining about a nuisance and making the request for a hearing), including a telephone number where they can be reached during normal office hours
- the name, street and mailing address of the *respondent* (farmer alleged to be creating the nuisance) and the location of his or her operation
- the nature of the complaint, including; date(s) of complaint(s); pictures if they are helpful; how the nuisance affects the applicant; and what authorities have been involved in trying to resolve the issue.

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In short, the more information the applicant can supply, the better. The *NFPPB* makes decisions based only on what it hears from each of the parties involved at the hearing. Information in the application is extremely important, since the *NFPPB* may refuse to hear an application if it is considered to be trivial, frivolous, vexatious, not made in good faith, or if it appears that the applicant has insufficient personal interest in the subject matter.

Once the *NFPPB* decides to hold a hearing, a date and location is chosen. It can be difficult to choose a suitable date, since it must fit the schedules of the *NFPPB*, the applicant, the farmer, any persons having technical or special knowledge of any matter in the hearing that may be testifying, and any lawyers that may be present for either party.

All applications should be forwarded to the:

Secretary,
Normal Farm Practices Protection Board
Ontario Ministry of Agriculture, Food & Rural Affairs
Wellington Place,
R. R. # 1 Fergus,
Ontario. N1M 2W3

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What to Expect at a Hearing

A total of 19 hearings were held from June 1990 to January 2000. This includes 15 under the previous *Farm Practices Protection Act, 1988*, which had similar hearings. Of these, 10 dealt with odour, 5 with noise and 4 with dust.

Here are some things applicants and respondents should know before attending a hearing:

- They are not as formal as a court proceeding, but still very structured, and the parties affected and onlookers should remain courteous and respectful at all times.
- They usually take place in local municipal buildings, if possible, to keep costs down, to limit travel by the parties affected, and to put the hearing in a familiar setting.
- They can be attended by anyone, but only those affected, or those invited to give testimony, are allowed to speak.
- There is no rule that a lawyer must represent the *applicant* or *respondent*, but a lawyer's training means they know how to conduct themselves in a court-type proceeding. Some people are more comfortable letting someone else represent them, even though it will cost them money.
- The *applicant*, witnesses speaking on their behalf, and their lawyer (if present) usually sit on one side of the room. The *respondent*, witnesses speaking on their behalf, and their lawyer (if present) usually sit on the opposite side of the room facing the other party. The Board members sit at the front of the room.
- Attendance usually ranges from as few as 10 to as many as 100 people, including the Board, the affected parties, those invited to give testimony, and interested onlookers.
- If the *applicant* or *respondent* wishes to ensure the attendance of experts to speak on their behalf, they can ask the Board to have that person(s) summonsed. This must be done far in advance of the hearing date.
- Board hearings range in complexity and there is no fixed length of time to complete a hearing. However, it usually takes a minimum of one half day to as much as two days.
- Rooms are as small as a boardroom or as large as a council chamber.
- As letters, pictures, aerial photos and other items are referred to in the hearing, they become submitted as articles of evidence for consideration by the Board.
- Complaints about problems other than the seven nuisances outlined in the *FFPPA* will not be considered by the Board, since the legislation does not give them jurisdictions over other matters.

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There is a sequence of events to follow that is outlined by the Chair of the *NFPPB* at the outset of the hearing.

- The *applicant* outlines their version of events, why they believe they are aggrieved, followed by a cross-examination by the *respondent*, and questions from the Board. Those invited or summonsed to speak on behalf of the *applicant* then give their testimony, are cross-examined, then questioned by the Board.
- The *respondent* outlines their version of events, why they believe they are following normal farm practice, followed by a cross-examination by the *applicant*, and questions from the Board. Those invited or summonsed to

speak on behalf of the *respondent* then give their testimony, are cross-examined, then questioned by the Board.
- *Experts* summonsed by the Board to attend the hearing outline their expertise on the topic, and answer questions from the Board, the *applicant* and *respondent*.
- If a complaint has festered for a long period, the *applicant* and *respondent* may not be on speaking terms. The hearing might be the first time they have been in the same room for a long period. It can be uncomfortable for them. However, hearings often become a 'healing session', and a chance to finally air both of their concerns on the issue. Often, concerns about farm practices arise from a misunderstanding or a lack of communication. Comments such as, 'I didn't know that', or 'Why didn't you tell me first', or 'I just want you to understand that the odour bothers me', are all commonly heard at hearings. That is why OMAFRA continues to work with farm organizations and rural municipalities to increase awareness of the realities of rural living, and why OMAFRA Agricultural Engineers continue to offer abatement, conciliation and mediation services for nuisance complaints.

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The Decision of the *NFPPB*

The *NFPPB* has three options available to it after a hearing. It shall:

- dismiss the application if the Board is of the opinion that the disturbance results from a normal farm practice
- order the farmer to cease the practice causing the disturbance, if it is not a normal farm practice, or
- order the farmer to modify the practice in the manner set out in the order so as to be consistent with normal farm practice.

The decision of the *NFPPB* usually takes 4-6 weeks before being sent to the parties involved. This is quick compared to the court system.

Any party to a hearing under the *Act* may appeal an order or a decision of the Board on any question of fact, law or jurisdiction to the Divisional Court within 30 days of the making of the order or decision.

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Further Information

For more information on solving nuisance complaints, see the following OMAFRA Factsheets

92-126	Reducing Odour and Noise Conflicts Between Rural Neighbours
96-033	Noise Control on Farms
96-103	Odour Control on Livestock and Poultry Farms
98-035	Bird Control on Grape and Tender Fruit Farms
98-065	Community Relations in the Rural Area

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Last Updated: July 25, 2000